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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Joint written statement*/submitted by Europe-Third World Centre, a non-governmental organization in general consultative status, and the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 March 2001]

*/ This written statement is issued, unedited, as received in English, French and Spanish from the submitting non-governmental organization(s).

GE. * 2 0 0 ' 0 ' 2 0 7 4 *
ENG

The participation of transnational corporations in the development and implementation of the "Colombia Plan" and its consequences on human rights violations.

1. The Colombia Plan

Presented as a fight against drug trafficking and officially dubbed *"a plan for peace, prosperity and the strengthening of the state"*, the *Colombia Plan* is in reality a military operation whose objectives are the opposite of those publicly stated.

The plan was to all intents and purposes initiated by Washington, developed by the United Sates State Department and accepted in a bilateral agreement by President Andres Pastrana, without consulting either the public or the Colombian Congress. Indeed, the Colombian people learned of it through the press (*El Espectador*, 2 January 2000).

The aim of the plan is to secure United States hegemony, military in particular, in the region, and to allow United States transnational corporations (TNCs) to exploit the natural resources of the country without any social or environmental considerations, whilst preserving the privileges of the local oligarchy. Land control and management, oil exploration and development, gas reserves, hydroelectric projects, banana plantations, the tourist industry, Amazonian bio-diversity and huge construction projects such as the inter-oceanic canal, are examples of the hidden agenda of the Colombia Plan[1].

This plan is being implemented with total contempt for the civil, political, economic, social and cultural rights of the peoples of Colombia, who are its primary victims, as shown by the massive displacements of population. In fact, this displacement reveals one of the plan's most cynical aspects. Land emptied of its inhabitants is easier to work with intensive agriculture and to develop for oil pumping and mineral mining. Far from being one of the consequences of this war, population displacement is one of its objectives. In this respect, it is telling that 80% of international aid for this plan is allocated to its military aspect and only 4.8% to the consequences of the population displacement that it entails[2].

The plan will cost US$ 7.328 million. The contribution of the Colombian government will be US$ 3.3 million, that of the U.S. government, US$ 1.6 million. The European Union was expected to finance the rest. The European Union, however, has refused[3].

The Colombia Plan is first and foremost a military plan. The armed contingent consists of, on the one hand, the U.S., acting through the granting of public funds, as well as through the sending of materials, equipment and consultants, and, on the other hand, the Colombian army, allied with the paramilitaries and supported both by the local oligarchy and by the major landowners. 70% of the crimes committed in the country are linked to the paramilitary groups: *"The High Commissioner notes that most violations of the right to life have been attributed to paramilitary groups sometimes acting in conjunction with, or with the acquiescence of, members of the armed forces or police*[4]*."*

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[1] During the 51st session of the Sub-Commission for the Promotion and the Protection of Human Rights and the 56th session of the Commission on Human Rights, the CETIM made oral declarations denouncing crimes committed against the U'wa people who were fighting against the Oxydental Petroleum and the dreadful effects of the Urra I dam on the Embera Katio people, the farmers in the region and the fishermen of Lower Sinu.

[2] Boletin de la consultoria para los derechos humanos y el desplazamiento, Bogotá, 7 September 2000.

[3] European Parliament Resolution B5-0087/2001.

[4] Report of the United Nations High Commissioner for Human Rights (E/CN.4/1998/16).

The real objectives of the Colombia Plan

Despite its promising name, the Colombia Plan does not encourage peace or prosperity much less the strengthening of the state. In reality, the aims pursued, from conception to implementation, are the following:

- to reinforce, equip and train the Colombian army in order to fight the guerrillas, particularly the Revolutionary Armed Forces (FARC), then to regain control of the areas the guerrillas occupy;
- to fumigate the coca crops with chemical and biological sprays;
- to repress the social activist groups (small farmers, indigenous people, fishermen, trade unionists, etc.);
- to insure United States hegemony in this area[5]
- to secure United States control over Colombian oil reserves in a geopolitical context influenced by the stand of Venezuela and Ecuador on this subject;
- to allow United States transnational corporations to exploit the natural resources of the country without any social or environmental considerations;
- to accelerate the process of taking over the land while maintaining the long-term privileges of the local oligarchy[6].

The social and environmental consequences of the Colombia Plan

The supporters of this plan claim that they are acting for the well-being of Colombia and to create a better future for the country. However, the facts tell a very different story and demonstrate that the consequences will be serious and far-reaching:

- owing to its military character, it worsens the violence that is already consuming this country, encouraging acts of violence perpetrated upon the civil population and, as a consequence, accentuating population displacement[7];
- it threatens to spread the conflict throughout the whole region;
- it offers substantial support to the paramilitary forces, whose collusion with the national army has been proven, thus reassuring the impunity they enjoy;
- it sabotages the peace negotiations because it supports the paramilitary who are a real obstacle to the success of such negotiations;
- it blames drugs for the conflict, whereas these illegal crops are not its cause but the result of the land-holding concentration and the deterioration of the economic and social conditions of the small farmers, the coca plant having become their only source of revenue;
- the already initiated biological and chemical spraying are an extreme threat to the health of the population (destruction of local staple crops, water contamination, widespread appearance of ulcers, eye irritations, and other illnesses);
- the spraying of pesticides has already had a considerable effect, and its long term consequences on the environment are not known, putting at risk one of the most richly biodiverse regions on the planet[8];

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[5] From this point of view, the Colombia Plan is a major breakthrough for U.S. domination in Latin America implemented in a series of diverse strategies including technical aid from the CIA, coup d'etats (Chili 1973, Guatemala 1954, Haiti 1991, etc.…), military invasion (Panama) army support of subversive movements (Nicaragua), military bases (Porto Rico: Iles de Vieques, Equator: Base de Manta) and embargo (Cuba).

[6] The local oligarchy represents less than 3% of the population and owns almost 70% of the land. Todrigo Acosta "The social battle in the difficult Colombian situation", in FMI. *Les Peuples entrent en resistance*, CETIM/ CADTM/ SYLLEPSE, 2000, p. 112.

[7] Ecuador, Venezuela and Panama anticipate a massive influx of refugees on their territory and the HCR has recently opened co-ordination offices in Ecuador and Panama. The HCR, already present in Bogotá, has opened two offices in Apartado and Barrancabermeja, and its budget has increased from US$ 1.8 million this year to US$ 4 million in 2001. HCR, *Refugees*, vol. 2, no. 119, 2000.

[8] The Colombia Plan concerns the whole of humanity when planning chemical and biological poisoning and the destruction of parts of the Amazon. If, as many contend, this area is the lungs of the world, then it does not belong to the United States.

- the farmers who flee these contaminated zones are settling new land by clearing it in the Amazon forest, thus unwittingly taking part in its progressive destruction.

The position of the European Union

The Colombia Plan does not take into account the economic, social and political reasons that have led the country to this situation. This is most particularly what the European Union criticises, while opposing this military solution and proposing the following;

- a stronger support of economic and institutional co-operation;
- the resumption of negotiations between the FARC and the government;
- the opening of multilateral negotiations involving all people concerned from Colombian society;
- the encouragement of real land reform;
- promoting the re-establishment of economic, social and political conditions allowing the full enjoyment of human rights for all;
- the shared responsibility of both the consumer and the producer countries for drug trafficking must be taken into account, and strategies aiming at fighting money-laundering must be undertaken.

2. The Colombia Plan: a war for the private interest of mostly American transnational companies

The Colombia Plan, a war for the land, the raw materials and the resources of the country

It is well known that Colombia represents a major geo-strategic interest for United States military hegemony, but it also represents a colossal economic interest for United States transnational companies. Relying on the army and the local oligarchy that it supports, the Colombia Plan has an unacknowledged, although known, aim, to wit to intensively exploit the resources of the country, as evidenced by the amendments proposed by United States Senators Dewine, Grassley and Coverdell, who request that their government: "*Insist that the Colombian government complete the urgent reforms aimed at opening its economy completely to investment and international trade, particularly to the oil industry*"[9].

Taken out of their context, these words may seem commonplace, but they are full of meaning, starting with the accent put on the complete character of the expected economic opening. It is true that the transnational companies are already very present in Colombia. Might one conclude that they have the intention of taking over the whole country?

What Senators Dewine, Grassley and Coverdell are saying is a euphemism. In reality, by taking back the regions dominated by the FARC, what the Colombia Plan is proposing to the TNCs is to hand over to them an entire country in which these transnationals already have a strong presence owing to the opening up of its markets and finance and to the wave of privatisations set in motion by the I.M.F., which is putting pressure on the State to reduce its fiscal deficit and obtain foreign currencies to pay back foreign debt. TNCs possess, for example, "85% of the public electricity companies, acquired at prices reflecting gross undervaluation (51% of the Bogota energy company has been sold US$ 2.8 million, one third of its real value; of this amount, US$ 1.1 million has been de-capitalised in 1999)"[10].

These privatisations contribute to the weakening of the national economy and also lead to higher costs for the consumers. "Energy has thus became 300% more expensive since 1999; in 1998 alone the price of a local telephone call increased from 5 pesos a minute to 15 pesos[11]."

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[9] Maurice Lemoine, "Plan Colombie, passeport pour la guerre" *Le Monde diplomatique*, August 2000.

[10] Rodrigo Acosta "La Lutte sociale dans le difficile contexte colombien" in FMI : les peuples entrent en resistence CETIM CADTM SYLLEPSE, 2000 p. 113.

[11] Ibid

As for agriculture, the TNCs have benefited from OMC agreements and an opening of the borders that have devasted the country's agriculture. There have been an increase in land concentration in the hands of the TNCs and of the large landowners and an increase in the land sown to export crops, at the expense of local staple crops, – all with a view to obtaining foreign currency for paying off the debt. Self-sufficient in rice until 1990, Colombia today imports 450,000 tons of rice a year.

When Senators Dewine, Grassley and Coverdell openly speak of oil development in Colombia, they are echoing the Vice-President of the Oxydental Petroleum, a company known for the crimes it has committed against the U'wa people, who are asking that the plan be not solely limited to the Putumayo region[12], the company being ready to start its operations in the north of the country. From this it is easy to perceive the Colombia Plan as the armed intervention of capitalism.

Private interest and political responsibilities

Even in the U.S., public support the Colombia Plan has raised problems in the area of political responsibility. The United States government wants to protect itself against the possible political consequences of its involvement. Despite a consensus on the basic premises of the program, the Congress was reluctant to vote the agreement, and it was not until June 2000 that the Senate gave its consent. Both the amount of money committed and the military support were reduced. The number of American advisors in the field has been limited.

However, this does not mean that United States commitment to the Colombia Plan has been reduced. Using the practice of outsourcing, the government of the United States has subcontracted out part of the military aid to be provided. "Ex-members of the U.S. Special Forces, 'specialists' and independent experts are expected in Colombia, under private contract, to assume do the job that the United States armed forces cannot or will not undertake[13]."

Conclusion

The Colombia Plan is a war officially financed by national and international public funds. This war, however, in which the designated enemies are drug trafficking and guerrillas, is in fact a war that aims to take over the natural resources of the country. From the conception of the plan to its implementation, TNC interests have been defended and implicated. In point of fact, the Colombia Plan is a war whose human and financial costs are public, and the benefits largely private.

We are thus requesting that the responsibility of the transnational companies involved in the Colombian Plan be seriously taken into account so that the sponsors and the perpetrators of the human rights violations committed daily in Colombia do not go unpunished.

Accordingly, the CETIM and AAJ condemn the implementation of the Colombian Plan, call upon the international community to oppose it by all appropriate means so that the civil, political, economic, social and cultural rights of the Colombian people may be respected, and recommend that the Commission for Human Rights adopt a resolution along these lines.

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[12] Province situated in the south of the country.

[13] Maurice Lemoine, "Plan Colombie, passeport pour la guerre", *Le Monde diplomatique*, August 2000.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Joint written statement*/submitted by Europe-Third World Centre, a non-governmental organization in general consultative status, and Women in Law and Development in Africa, a non-governmental organization in special consultative status

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The "African Growth and Opportunity Act" and Human Rights[1]

The *Europe-Third World Centre* (CETIM) and *Women in Law and Development in Africa* (WILDAF) draw the attention of the 57th Session of the Human Rights Commission on the nature and the drastic consequences for Africa brought on by the African Growth and Opportunity Act voted by the US Congress on the 18th May, 2000.[2]

Known as the *African Growth and Opportunity Act (AGOA)*[3], this law establishes up to 2008- a trade regime defining economic and commercial relations between the United States and 48 African countries (with the exception of the Magreb). This law is presented as heralding a brighter future for the « beneficiaries ». Under closer examination, this is not the case.

In reality, an analysis of the conditions imposed by the United States to "encourage increased trade and investment" reveals the sinister intentions of the American authorities and their design to dominate the world. This stands out upon analysis of the list of African countries chosen to be part of this trade regime, the conditions imposed on them, and a detailed examination of the consequences of this law on for one of them, the Republic of Mauritius.

The African countries "targetted"

In the introduction of the AGOA text explaining the reasons for this law, one of the principal arguments is that "Sub-saharan Africa" is "*a region richly endowed with both natural and human resources ... of enormous potential and of enduring political significance to the United States*". Nothing could be clearer: it is the political interests of the USA that are at the basis of the adoption of such a law. Nowhere in this law is it explained why these African countries that are so "richly endowed with both natural and human resources" have not been able to realise their full economic potential. The law simply states that trade and investment contributes to development and establishes a relationship between economic development and political freedom.

Even though AGOA establishes a trade framework between the USA and most African countries, it is not the result of multilateral negotiation, but is unilaterally imposed, even extra-territorialy imposed by the USA. Furthermore, it is solely the President (of the United States) who decides which African countries will be the "beneficiaries" of AGOA and which will not. The domination of the United States is therefore clear; there is neither justice, nor equality or any possible recourse in this relationship. The AGOA is a new form of colonisation in which the United States attempts to appropriate the wealth of African countries while the vast majority of their citizens are ignorant of the consequences this Act has for them.

Conditions imposed

The chosen "beneficiary" countries need to submit to the following conditions:

- Adoption of a market-based economy;
- Reduction of tariff and non tariff barriers and other obstacles;
- Establishing "free" trade zones;
- Withdrawing State subsidies;

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[1] This text has been drafted in collaboration with LALIT.

[2] In a written declaration submitted to the 56th session of the Human Rights Commission, the CETIM had already criticised this law when it was still a Bill (cf. E/CN.4/2000/NGO/99).

[3] Given the number of times this law was proposed, blocked, re-proposed in the US House of Representatives and the Senate, it has changed names many times : *Africa Bill, Africa Growth and Opportunity Bill, l'Africa Act, Trade and Tariff Act*. The voted version is officially known as the *African Growth and Opportunity Act* and is also known by the initials : AGOA.

- Dismantling government price control;
- Equal treatment for foreign and national investors;
- Non-engagement in activities that "*undermine United States national security or foreign policy interests*".

It is the President of the USA who designates a Sub-Saharan African country as an "*eliglible*" African country or whether an African country's designation as "eligible" country should be "*terminated*".

There are three conditions relating to the respect of human rights i.e.: the rule of law, poverty reduction and the respect of political freedom. Even if these conditions may appear noble at first sight, African organisations and movements are concerned that the USA will use these conditions as threats against States that attempt to defend their respective economic and political interests.

What do AGOA conditions mean?

AGOA aims at entrenching a market-based throughout Africa. A market-based economy means that the whole economy operates on a capitalist basis including water, electricity, telecommunications and other social services. This means that governments have to sell-off all public property through privatisation and accept the consequences: massive retrenchment of workers, attacking security of employment and work conditions and increasing poverty.

The suppression of State subsidies and price control means attacking national agriculture and local production in African countries as these countries do not have the means to compete with products of North American transnationals. This will further undermine food security and sovereignty of these countries in which living conditions are already difficult.

Similarly, equal treatment given to foreign investors as for national investors means to submit these countries to Transnational rule, putting an end to hopes of economic and political independence.

The acceptance of AGOA finally means that African countries are coerced into meekly opening up their markets to North American Transnationals without question and without the power to control them. If the USA is not satisfied that countries are respecting eligibility conditions, the USA will be able to close their markets to African goods. However, there is no reciprocity in this trade regime: African goods will continue to be submitted to harsh conditions to be able to enter the American market. In short, the acceptance of AGOA means that African countries must renounce not only their economic sovereignty, but also their political sovereignty and means total capitulation to the USA as, amongst other conditions, these countries must pledge not to "*undermine United States national security or foreign policy interests*".

In this context, it must be stressed that the USA is perpetually calling for the globalisation of the "free-market". They proclaim the need to open up trade barriers. When it comes to opening up their own trade barriers, they are no longer disposed to talk of the need for a "free-market". Should we then consider that when the USA invokes "fundamental freedom", they are in fact talking of freedom for their Transnational companies?

AGOA's impact on the Republic of Mauritius

There are certain conditions specified in AGOA that threaten employment in Mauritius and work conditions in the region:

1) All the yarn used in textile products assembled and cut in Mauritius have to come from the United States or from the 48 African States listed in AGOA. The only exception to this is in the case of particularly poor African countries (with less than $1,500 per capita).[4].

2) Mauritian Free Zone companies are preparing themselves to close down their factories in Mauritius and delocalise them; opening them up in African countries (Mozambique or Madagascar) where cotton or wool is produced and/or where eligibility conditions are less stringent given widespread poverty.

3) In Mauritius, the biggest and oldest textile plant, has started to sack workers and has delocalised nearly 40% of its operations to Madagascar. Other Mauritius textile factories are preparing to delocalise entailing massive sacking of workers. The jobs of 100,000 Mauritian workers in the Free Zone is threatened. For some time, Mauritian employers wanted to delocalise their operations to countries where labour is cheaper. They have now been provided with an excellent pretext to do so. Unfortunately, it is expected that this delocalisation will have a negative impact on the peoples of the region.

4) Work conditions of Mauritian workers are deplorable, especially in the Free Zone which is mostly textile-based. The delocalisation of the textile Free Zone to other African countries means that they will now be based in countries where work conditions and salaries are even worse than in Mauritius.

Different reactions to AGOA

Since AGOA was first proposed, different views have been expressed by various sections of the economic and political community in Africa.

Mauritian employers, particularly those of *Floreal Knitwear* textile company, have been in the forefront of the pro-Africa Bill lobbying of US Representatives and Senators so that they vote the Bill. *Floreal Knitwear* has spent large sums of money in this campaign and delegated one of its top representatives, Mr. Maurice Vigier de Latour to the US to lead their campaign there. M. Peter Craig, political adviser, in charge of trade relations at the Mauritian Embassy in the USA, also played a key part in lobbying.

At international level, the Mauritian government has not only given its full support to Mr. Vigier de Latour et the private sector, but has also contributed to weaken African resistance (led by the Mandela government at the time) to conditions imposed within AGOA. This goes to show how democratically-elected representatives are being co-opted to defend private sector interests, scandalously ignoring the will of the peoples of Africa.

In the USA, textile companies have opposed AGOA because of the threat posed by free-entry of cheap African textiles to the American market to their pockets.

The trade union movement in the USA have also opposed AGOA given that this law threatens jobs in the States, especially in the textile sector. Many organisations and social movements mobilised against this law in the big demonstrations held in Seattle in 1999.

The *All Workers Conference*, a platform initiated by *Lalit* and trade union militants for a number of years, opposed conditions imposed by AGOA. The *All Workers Conference* transmitted a letter to all US Representatives of the House through the US trade union movement to explain how AGOA conditions would be disastrous for African peoples.

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[4] Madagascar will benefit from this exceptional measure but only up until 2004.

The African women's movement (WILDAF), on the initiative of the Mauritian women's movement (Muvman Liberasyon Fam), prepared a declaration endorsed by 218 women's organisations and women of all African regions. This declaration was transmitted to US Senators through American associations.

Other actions opposing Africa Bill conditions had also been undertaken by other African networks, particularly those in the ATTAC network.

All these actions boosted the US movement against AGOA and contributed to US Representatives of the House to present an alternative Bill called the " Hope for Africa Bill " where no conditions are imposed on African countries for African goods to enter the US market. All this was not sufficient to halt the adoption of AGOA. The campaign against AGOA must continue, as this law:

- Will bring about large-scale retrenchment of workers in many African countries and in others, create lower-paid jobs with inferior work conditions;
- Will facilitate or re-enforce the entry of North American Transnationals in Africa in a colonial way that will undermine the little independence gained in these States (in the 1960's);
- Will destroy the economy of African countries through massive privatisation;
- Will dismantle all subsidies to local production and taxes on imports;
- Will give North American Transnationals the same advantages than those endowed to local companies;
- Will coerce African countries into aligning their foreign policy onto that of the USA;
- Is in total contradiction with existing international law;
- Abuses rights of the two International Covenants on economic, social and cultural rights as well as those on civil and political rights, of African citizens

Given the above, CETIM and WILDAF recommend to the Human Rights Commission that an expert be nominated with a mandate to study whether AGOA conforms to the rules of human rights, keeping in mind:

- The respect for the principle of equal rights and self-determination of peoples (art. 1, para 2 of the United Nations Charter);
- The principle of sovereign equality of all States (art. 2, para 1 of the United Nations Charter);
- The principle in which "all peoples freely determine their political status and freely pursue their economic, social and cultural development." (art. 1. of Covenants on Civil and Political Rights and Economic, Social and Cultural Rights).

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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The responsibility of transnational companies (TNCs) in the violation of human rights

During the last twenty years, TNCs have acquired unprecedented economic, financial and political power. Markets and capital globalization, which has been mostly profitable to these companies, has allowed for further concentration of their capital and production means, creating oligopolistical situations. Their activities cover all sectors . They can choose where and how to produce and to stock up, and where and how to sell their products.

Furthermore, TNCs have the power to influence the policies of economically weak States (all the more so since their turnover is superior to the GDPs of such countries), as well as the policies of more powerful States, as shown by the composition of the newly-elected US president' cabinet. TNCs can also influence the policies and the decision-making process of international institutions.[1]

This accumulation of power hasn't gone hand in hand with a similar level of awareness and responsibility, especially in the field of human rights. It hasn't either brought any international legal structure nor democratic instruments strong enough to monitor the activities of these companies. The actual situation is disheartening : abusive exploitation of natural resources and human labour, water, soil and air pollution, environmental disasters, support to armed conflicts, to bloody repressions, and to coups ; corruption and financial crime.[2]

In response to information provided by human rights organisations, TNCs have fought back with seduction campaigns in order to convince the public opinion (mostly western consumers) that they have become aware of their responsibility and that their business is becoming ethically correct. These communication strategies have mainly aimed at creating a better image of themselves but brought very few - and temporary – improvements, and no questioning about the way they operate.

Faced with the terrible environmental and human situation characterizing our time, and considering the concentration of power in the hands of TNCs, it is only legitimate and logical to question oneself about the impact of these companies' activities and the way they operate on humankind and its future.

To coax public opinions, TNCs present themselves as the elite corps of the democratic, flourishing « civilisation » fighting against totalitarianism and poverty. But the reality is different : TNCs are driven by their search for profits and power and have no interest in changing the status quo.

Civil and political rights

Numerous studies have shown evidence of TNCs' support to coups d'Etat and/or to dictatorships. Practically, their support came as investments aiming at ensuring « political stability » for States of major interest because of their raw materials, their labour force and their ability to repress social protest movements that bring forward environmental, cultural and union-related claims.[3]

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[1] Regarding the Global Compact :
see http://www.xs4all.nl/~ceo/observer1/un.html. Concerning Europe : Observatoire de l'Europe industrielle, *Europe Inc.*, Agone Editeur, 2000.

[2] *Sociétés transnationales et droits humains. Etudes de cas et responsabilités*, CETIM, AAJ, FICAT, 2000.

[3] Many other examples are mentioned in Declaration E/CN.4/2001/NGO/105.

It has also been shown that chaos generated by armed conflicts (in Angola, Congo, Colombia, etc) has favoured TNCs' profits in the field of raw-materials development (oil, timber, ore, water, etc). Up to which extent are then TNCs involved in financing rival factions and perpetuating certain conflicts ?

Labour rights and employment

TNCs create fewer direct job opportunities, in proportion to their economic activities.[4] The reduction of payroll costs, through mergers, acquisitions and restructuring, is one of the major neo-liberal strategies aiming at increasing production and capital concentration. *« During these last ten years, the 500 largest companies have made redundant an average of 400'000 employees per year, and this regardless of the considerable progression of their profits. »* [5] *« During the second semester of the year 2000 Internet companies (...) have suppressed 37'177 jobs in the United States. »*[6]

Although the number of jobs tends to decrease globally, it is increasing in developing countries and in free zones. Taking advantage of trade liberalisation and I.T., the big industries *« use local sub-contractors from Asia or Northern Africa ; they no longer need to resort to foreign direct investments to benefit from the advantages of relocation. »*[7]
These advantages are the following :

- very favourable tax conditions ;
- very cheap labour ;
- lax supervision of respect for human rights ;
- a repressive machinery willing to ensure the « security » of their activities.

Opting for countries that offer the best conditions, relocations are also carried out towards countries of the South. For example, Nike has sub-contracted its production in Asia, but following an increase in the wages in South Korea and Taïwan, in the late'80s, sub-contractors from these countries have relocated their production in countries with lower labour costs. Between 1977 and 1995, Nike's turnover was multiplied by 164.[8]

Relocation has multiple negative effects on employment, as well as on the respect for labour rights both in the North and in the South :

- it contributes to labour exploitation in economically-weak countries ;
- it takes advantage of the complexity of subcontractors networks to hide TNCs' involvement in human rights violations ;
- it is a threat for employees from industrial countries, worsening working conditions and increasing precariousness of living conditions.

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[4] The first 200 world companies employ directly 18,8 millions of workers, that is 0,75% of the world labour, while their total sales volume represents more than a forth of the global economic activity, *Courrier international*, No 318, 5th-11th December 1996, p. 31.

[5] F. Clairmont and J. Cavanagh, « Un quart de la production mondiale, deux cents sociétés, sous les ailes du capitalisme planétaire » in *Le Monde Diplomatique*, March 1994.

[6] *Le Courrier*, 9th February 2001.

[7] F. Chesnais, *La mondialisation du capital*, Ed. Syros, 1994, p.90.

[8] D. Horman, *Stratégies des multinationales*, GRESEA, Bruxelles, 1998, F3/5.

Economic, social and cultural rights and the expansion of « developing countries »
The logic behind globalization as imposed by TNCs is one of concentration and exclusion. It favours the industrial and financial elite and only takes into account the credit-worthy population of the world. In this context, developing countries have no chance to improve their economic, social and environmental situation.

Foreign direct investment is mainly used for mergers and/or acquisitions. Privatisation and acquisitions at low prices of public companies generate worse quality of services, higher costs for consumers, also suppressing a source of income for the States concerned in favour of TNCs. Moreover, corruption is used in order to obtain authorizations to exploit raw materials, or to settle their production, thus having a negative impact on respect of human rights and on the economic, social, democratic and environmental future of the populations concerned.

In the pharmaceutical and agroalimentary industry, TNCs' activities are often conflicting with the right to health and to sufficient and adequate diet. Slowing down the diffusion of generic medicine, imposing GAOs or invading local markets (thanks to the WTO agreements in the agricultural field) brings profits to TNCs to the detriment of populations, especially in the South.

The creation of *Terminator*, a genetically modified seed made sterile, but whose yield and nutritional value has not improved, shows that TNCs are ready to undermine farmers and endanger the food-related safety of entire populations in order to control the growth stages of agricultural products and to impose them.

In the environmental field, the disaster is patently obvious. Adding to major disasters such as Bhopal or Exxon Valdés, natural resources are over-harnessed and the soil, the air and the water are constantly polluted by oil, chemical and agricultural industries. *« The economic logic, according to which we should get rid of toxic waste in low-wages countries, is impeccable to me(...) Any strategy related to environmental problems that slows down the growth of poor countries (...) is perfectly immoral. »*[9] This statement was made in 1991 by Mr. Larry Summers, director of Economic studies at the World Bank, subsequently Treasury deputy-secretary under the Clinton administration. It says a lot about a certain concept of immorality and the importance given to the right to live in a healthy environment.

Citizens preoccupation and voluntary codes of conduct
Thanks to the work of human rights organisations and the rise of social movements, the violations committed by TNCs are well documented and publicly denounced. The result has been a worse image in the eyes of consumers. In order to reconquer their markets and pursue their growth, TNCs have responded with large seduction campaigns aimed at enhancing their image and convincing western consumers of their good intentions both in the social and environmental field.

Voluntary codes of conduct and labels are at the center of this campaign since there is a link between the mediatization of violations committed by TNCs and the adoption or creation of voluntary codes of conduct. This is how, following massive exposure campaigns in the Western countries, companies such as Levi's, Nike or Adidas have adopted voluntary codes of conduct. While the content of and the respect for these codes are voluntary, their existence has been imposed by social pressure. Just as Mr. Hughes de Rouret, Shell CEO at the time of writer Ken Saro-Wiwa' execution , declared : « *We have understood that the international*

[9] E. Toussaint, *La bourse ou la vie*, CETIM/CADTM/ED. LUC PIRE/SYLLEPSE, Bruxelles, 2000, p. 357.

society is no longer ruled only by traditional authorities and that it is time to take into account consumers, moral pressure and environmentalists, which has lead us to reconsider our principles. »[10]

For TNCs, these communication campaigns have two purposes :
- to retrieve their prestige in the eyes of consumers, as well as their competitivity on the market ;
- to avoid real democratic control that would compel them to respect all human rights.

For human rights organisations, voluntary codes of conduct are highly questionable :
- most of these codes do not include minimal standards and social rights that are internationally accepted. Trade-union freedom and the right to collective organisation are regularly missing ;
- these codes do not have any legal value ;
- they are generally adopted without consulting the employees and are rarely translated into local languages ;
- their application, often temporary, hasn't shown any important improvement ;
- they create a classification of rights by putting forward improvements that move public opinions (child labour) to the detriment of other fundamental rights (trade union rights) ;
- they allow TNCs to elude the real problems that their way of conducting business causes to the respect for all human rights ;
- independence of the organisations in charge of surveillance is not guaranteed.

Voluntary codes of conduct are often presented as a first step towards more binding measures. But one might rather wonder whether their real purpose is not to avoid adoption of such measures. Whatever the reason, the current situation shows that there is still a discrepancy between rights and duties.

Conclusion

TNCs' practices have negative effects on all human activities because they are based on the exclusion principle and on power and wealth concentration. TNCs are a major factor in the impoverishment and precariousness of populations all over the world, and in the deterioration of the environment. Their practices and policies conflict with democratic principles, the expansion of less developed countries and the well-being of our planet and its populations.

This is why it is urgent to create an international, binding legal structure that will allow real democratic regulation and control of TNCs activities.As a creation of the internationl community, the UN is in the best position to help creating such a structure. We hope that the Working Group on TNCs of the Sub-Commission on the Promotion and Protection of Human Rights will pass on similar suggestions during the 58th session of the Commission on Human Rights.

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[10] D. Horman, *Stratégies des multinationales*, GRESEA, Bruxelles, 1998, F4-4.

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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement*/ submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 March 2001]

*/ This written statement is issued, unedited, as received in English, French and Spanish from the submitting non-governmental organization(s).

GE. *0012142*

ENG

WESTERN SAHARA

In 1975, Spain withdrew from one of its last colonies - Western Sahara – and set in motion a series of events, which eventually led to the present conflicting situation in the area. That same year witnessed the signing of the Madrid Agreements that attributed Western Sahara to Morocco and Mauritania - though this last country later renounced its claims to the area – as well as Morocco's invasion of the territory and the subsequent war between the Kingdom of Morocco and the Polisario Front claiming the legitimate right of the Saharawis to self-determination according to international law.

The war continued until the cease-fire of 1991 when in conformance with the settlement plan previously approved, the United Nations created a peace-keeping mission: the United Nations Mission for the Referendum in Western Sahara (MINURSO), with a view to holding a self-determination referendum – the same that Spain was supposed to have held in 1975.

Initially scheduled for 1992, the referendum met with many obstacles, was postponed and finally suspended in 1997. The Houston Agreements reached in September 1997, under the auspices A. James Baker, the Personal Envoy of the United Nations Secretary General, reactivated the process and allowed for some progress to be made between the parties on issues such as the constitution of the electoral body, the confinement of the troops, the repatriation of the refugees, the release of political prisoners of war and the code of conduct for the referendum which was then scheduled for 7 December 1998.

Unfortunately, further disagreement on almost all these substantially fundamental issues caused a renewed series of postponements, the most important controversial point being the criteria for the identification of eligible voters, though other conflicting elements should not be forgotten such as the composition of the identification commission and the dubious security conditions for the return of the Saharawi refugees or the demining process. Meanwhile, obstructions to freedom of movement and free access to the occupied territory by the Morocco government were signalled by international organisations and even required, in May 1998, the intervention of F. Dunbar, Special Representative of the Secretary General. At the same time, in spite of the presence of MINURSO, reports were received of violent repression of civil Saharawi population, assassinations and arbitrary detention.

Despite this alarming situation, far from conducive to a climate of mutual trust, confidence and serenity necessary for the holding of a free referendum and despite a number of criticisms addressed to the United Nations Mission, MINURSO fully complied with its task, completing the identification of about 198.000 candidates to the vote and a provisional list of 86.349 voters was published at the beginning of 2000. Regrettably, Morocco authorities immediately and strongly opposed the above mentioned list maintaining that there had been errors and distortions in the overall procedure and thus thousands of appeals were submitted by the rejected applicants. As a consequence the identification commission finds itself now faced with about 135.000 appeals which constitute a cause for a further delay on the road to the holding of the referendum in view of the long work required by the data-processing and analysis of the appeals so as to come up with a means to overcome all possible obstacles to the appeal process.

Nevertheless, it must be mentioned that the year 2000 has seen a reactivation of meetings and diplomatic efforts to come to a final and just solution. Let us mention the expert-level technical meetings of the parties, held on 20 and 21 July 2000 in Geneva with the participation of representatives from both the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC). The talks were specifically meant to address outstanding issues relating to the appeals process, prisoners of war, political detainees and the implementation of confidence building measures for the return of Saharan refugees.

Once again it is deeply regrettable that no progress could be reported, not even to launch a simple pilot programme on confidence-building measures because of concerns expressed by Morocco.

A further meeting took place in Berlin, on 28 September 2000, to try to resolve the multiple problems relating to the implementation of the settlement plan and to try to agree upon a mutually acceptable political solution

though no great result was achieved in view of the greatly diverging interpretation by the parties of the main provisions of the settlement plan.

At the same time an alarming tendency seems to have surfaced, discrediting to some extent the MINURSO peace effort and looking for an alternative solution which has been termed a "third way" solution. It had been alluded to by the United Nations Secretary General in his report to the Security Council on 29 February 2000, thus putting aside the United Nations resolution which have firmly recommended the right to self-determination for the Saharawi people since 1966. On top of that, since the King of Morocco's trip to France and to the United States, a sort of campaign has been launched against what has been termed an "impossible" referendum and, specifically, the "third way" alternative has been presented as an unexpected solution to the press.

The United Nations Secretary General, has again alluded to this possibility in his last report, on 25 October 2000, when relating the words of his Personal Envoy, James A. Baker, in his opening statement in Berlin, where he stated that there could be many ways to achieve self-determination. It could be achieved through war or revolution; it could be achieved through elections, but this required good will; or it could be achieved through agreement, as had been done by parties to other disputes. Nevertheless the "third way" concept is unacceptable to Polisario.

The *International League for the Rights and Liberation of Peoples* (LIDLIP) wishes to underscore, that the path to a peaceful solution could be very long indeed and that the international community should be fully aware that any further impediment and postponement could constitute a very concrete danger. In point of fact, the Saharawi people's patience is growing thin and the situation is likely to become explosive. This people has been observing a 10 years' truce fully trusting in theUnited Nations' determination to solve the problem and feels now frustrated and disappointed. Should the United Nations fail to fulfil this role, the impatience of the Saharawi new generations might lead to a resumption of all possible means of struggle at their disposal to achieve what is their right, including war and this would have disastrous consequences for all the countries of the area.

It is the view of our organisation that the imprescriptible right of the Saharawi people to freely choose their future destiny cannot be questioned and that the time has come to implement all the measures foreseen in the settlement plan. The referendum must take place fully respecting the terms and conditions established and provided for in the United Nations resolutions and recommendations; therefore we appeal to the concerned parties, to the United Nations Human Rights Commission, to the international community not to spare any effort to this regard.

The International League for the Rights and Liberation of Peoples (LIDLIP) hopes that a joint and international effort and support will succeed in proving wrong the United Nations Secretary General's sad concluding words of his last report when relating the assessment of the Berlin meeting "...it is the view of my Personal Envoy, which I share, that further meetings of the parties to seek a political solution cannot succeed, and indeed could be counterproductive, unless the Government of Morocco as administrative power in Western Sahara is prepared to offer or support some devolution of government authority, for all inhabitants and former inhabitants of the Territory, that is genuine, substantial and in keeping with international norms...."; " ...it is also the view of my Personal Envoy, which I share, that if the Government of Morocco is not prepared to offer or support some devolution of government authority that could be discussed at a meeting of the parties during the next extension of the mandate of MINURSO, the Mission should begin hearing the pending appeals from the identification process on an expedited basis, without regard as to how long it might be expected to take to complete them".

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RIGHTS OF THE CHILD

Written statement*/ submitted by the Consortium for Street Children, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 April 2001]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. * 2 0 0 - 0 - 2 5 3 7 *

ENG

Street-living and street-working children face two particular threats from the juvenile justice systems of their country: they are more at risk of coming into contact with the juvenile justice system in the first place and simultaneously they are less able to defend themselves against violations of their rights within that system. Since they come from the poorest sectors of society, street children tend also to come from indigenous minority and/or low caste ethnic groups and are therefore affected by intense racism. These factors add up to a pattern of multiple handicaps which have serious implications for children's treatment in law, prison and in their access to justice. In addition, juvenile justice systems are traditionally oriented towards boys, thus compounding the vulnerability of girls within the system.

Street children are often subject to harsh sentences for petty theft, begging, 'vagrancy' or 'prostitution'. Their human rights are violated because of the activities in which they engage in order to survive. They often have no one to plead their case or speak out about conditions they may suffer, both before and during detention, such as extreme overcrowding, malnutrition, physical, mental and sexual abuse, lack of access to medical care or legal advice and little prospect of rehabilitation, education or release.

There is already a considerable body of international law which outlines the human rights standards to be observed in the administration of juvenile justice, in particular the 1989 Convention on the Rights of the Child (Articles 3, 37 and 40) and also including the International Covenant on Civil and Political Rights (Articles 6, 9, 10, 14 and 24), the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 11) and the 1969 Convention on the Elimination of All Forms of Racial Discrimination (Article 5). These basic principles are further elaborated in UN Guidelines such as: UN Rules for the Protection of Juveniles Deprived of their Liberty; UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); Standard Minimum Rules for the Treatment of Prisoners; Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; UN Code of Conduct for Law Enforcement Officials; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

However, despite the existence of these international standards, grave abuses of street children within juvenile justice systems are perpetrated with impunity on a daily basis, even in countries which have expressly passed domestic legislation to prohibit these practices.

Specific examples of alleged violations that have come to the attention of the Consortium for Street Children over the past year include: India - the torture of two children in detention in Chennai, Tamil Nadu, February 2000; Paraguay – the inhuman conditions and ill-treatment, sometimes amounting to torture, endemic in the Panchito López Juvenile Detention Centre, as highlighted in a recent report by Amnesty International (April 2001) and in the report of the Special Rapporteur on Torture (E/CN.4/2001/66, para. 835); Dijbouti – the detention of 29 Oromos (Ethiopian citizens) boys in squalid conditions in temperatures of between 35 and 45°C, subject to sexual abuse by fellow adult inmates and prison guards, April 2000; Honduras – the shooting of a 12-year-old boy by policemen, August 2000; Ceuta and Melilla (Spanish territories in North Africa) – the arrest, detention and alleged torture and ill-treatment of street children of Moroccan origin, from November 2000 onwards; Brazil – the ongoing crisis for several years in the FEBEM juvenile detention centres in Sao Paulo, with severe overcrowding, unsanitary conditions and routine violence, as outlined in Amnesty International's report (July 2000) and by the Special Rapporteur on Torture based on his mission to Brazil in August and September 2000 (E/CN.4/2001/66, para. 188 and E/CN.4/2001/66/Add.2).

The Consortium for Street Children believes the evidence gathered by human rights NGOs and by the Special Rapporteur on Torture are examples of a pattern of abuse which is affecting street children in many countries around the world and that there is an ongoing and urgent need for concerted international action to address these grave human rights violations.

With this in mind, the Consortium for Street Children would urge the Commission to press member states to implement resolutions from the 56th Session - 2000/85 (Rights of the Child) and 2000/39 (Human Rights in the Administration of Justice, in Particular Juvenile Justice) - which are essential if the abuse of street children in juvenile justice systems is to be halted. We would particularly highlight the following recommendations:

1. That every child alleged or recognised as having infringed the penal law is treated with dignity in accordance with Article 40 of the CRC, and that depriving children of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time (resolution 2000/85, paras. 35 and 36(b)). This should include an immediate end to the detention of street children for petty theft, begging, 'vagrancy' and 'prostitution'.
2. To prevent all forms of violence against street children (physical, mental and sexual) and to protect them from torture and abuse by the police, other law enforcement authorities or employees in juvenile detention centres, and to investigate allegations and impose appropriate disciplinary or penal sanctions against those responsible (resolution 2000/85, para. 23).
3. To ensure that, if arrested, detained or imprisoned, children are separated from adults (resolution 2000/85, para. 36 (b)).
4. To ensure that all structures, procedures and programmes in the administration of juvenile justice promote the education and rehabilitation of the children involved (resolution 2000/85, para. 36 (a)).
5. That 'at-risk' or 'neglected' children are not processed through the juvenile justice system but rather through appropriate social services.
6. That the principle of non-discrimination (resolution 2000/85, para. 25) in matters of juvenile justice be applied so as to end the harassment of street children on account of their socio-economic, racial and ethnic origins.
7. That all States who have not already done so should ratify existing international human rights treaties which protect street children from these violations, and that States withdraw their reservations to these treaties.

CSC welcomes the interest shown in this area by the UN Coordination Panel on Juvenile Justice, the High Commissioner for Human Rights, the Special Rapporteur on Torture and the Committee on the Rights of the Child. CSC particularly welcomes the Committee's proposal for an in-depth international study on violence against children (CRC/C/SR.650) and would urge the Commission to ensure that sufficient attention is paid in this report to the plight of street children.

The Consortium for Street Children calls on all Governments to tackle the complex problem of abuses of street children in juvenile justice systems as a matter of urgency. In addition to mainstreaming consideration of children's rights into existing treaty and non-treaty mechanisms, the Consortium for Street Children would urge the Commission to consider the naming of a Special

Rapporteur or Representative on Street Children to bring an end to the institutionalised violence and abuses committed against street children on a daily basis.